

State v. Leon Butler

08-22681cf10a

Date of Court Hearing 8/28/09

Oath: I, Florence Taylor Barner, swear or affirm that the facts in this affidavit are true to the best of my knowledge. I make this statement of my own free will and understand that it is under the penalty of perjury.

On 8/28/09 during the afternoon docket the Court held a hearing to determine whether the Court should recuse itself from the case where Mr. Melnick was the attorney of record. I was present for the hearing and observed parts of the hearing. It should be noted that Rick Rosenbaum was also present for parts of the hearing as were the courtroom staff (i.e. bailiffs Bernard Hardge and Ylanda Lessane and court reporter Keri Givens and the in-court clerk ebony king) Mr. Melnick sought to recuse Judge Cohen because Mr. Melnick worked on the campaign of then Judge Pedro Dijols against Mardi Cohen, Judge Cohen's spouse. Mr. Melnick objected to the Court having a hearing but the Court indicated that he did not understand why Mr. Melnick was seeking a recusal since the Court has always been fair to Mr. Melnick and his clients in the past and the Court did not understand Mr. Melnick's prejudice argument. Mr. Melnick explained to the court that he believed that his client could be prejudiced based on Mr. Melnick's work on the campaign and based on a previous recusal hearing wherein the Court questioned Mardi Cohen about the campaign and Mr. Melnick's involvement. I was present at the previous hearing where Mr. Melnick alleged that the Court may be biased against him and his clients because Mr. Melnick worked on the campaign of then Judge Pedro Dijols. Specifically, Mr. Melnick stated on the record that he felt that because Mardi Cohen, Judge Dale Cohen's wife, ran for the seat occupied by Judge Dijols that Judge Dale Cohen could potentially be prejudiced against him and his clients because of Mr. Melnick's work on the campaign to help Judge Dijols retain his seat.

During the 8/28/09 hearing Judge Cohen swore in the defendant and proceeded to inquire of the defendant of the allegations in the motion. Specifically, Judge Cohen asked Mr. Butler whether he knew anything about an election and Mr. Butler denied knowing anything about it. Mr. Butler indicated that he had spoken to his attorney, Mr. Melnick, about "going to a different judge" because of some issues between the judge and Mr. Melnick. Mr. Melnick then objected to courts inquiry citing to the attorney-client privilege and the court informed Mr. Melnick that the information was not privileged since it pertained to the facts in the motion that the client swore to. Mr. Melnick continued to object to the courts inquiry as to the other allegations in the motion. Specifically, Mr. Melnick said that he felt that during the previous hearing his credibility was being weighed against that of Mardi Cohen. The Court indicated that he has known Mr. Melnick for 20 years and has never felt any prejudice against him and the Court has always treated him fairly. Mr. Melnick indicated that he believed that the Court could not be fair in light of the

circumstances and the court indicated that Mr. Melnick was proceeding on perilous grounds in the sense that he could be perceived to be forum shopping. Mr. Melnick indicated to the court that he was not forum shopping and believed that the court should recuse itself based on the allegations in the motion. The court then advised Mr. Melnick that if he was forum shopping then that could be something that the Florida bar would be concerned about. Mr. Melnick then inquired of the court as to whether the court was threatening him with a bar complaint and the court did not respond. The court then recused itself.

State of Florida
County of Broward

Sworn to (or affirmed) and subscribed before me this 22nd day of DECEMBER, 2009
2009 by Florence Taylor Barner Florence Taylor Barner

(Signature of Notary Public - State of Florida)



CHRISTOPHER T. GALLUZZO
Commission DD 793706
Expires June 2, 2012
Bonded Thru Troy Fahn Insurance 800-365-7018

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____